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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 KYLE LYDELL CANTY,

8 Plaintiff,

9 v.

10 KING COUNTY, et al.,

11 Defendants.

CASE NO. C16-1655 RAJ-JPD

ORDER ON REVIEW OF REQUEST
TO RECUSE

12 Plaintiff has filed a civil rights proceeding under 42 U.S.C. § 1983, which action was
13 assigned to the Honorable Richard A. Jones of this District. The matter was referred to United
14 States Magistrate Judge James P. Donohue. To date, Judge Donohue's rulings in Plaintiff's case
15 have been confined to the sufficiency of Plaintiff's pleadings.

16 According to Judge Donohue, thus far, Plaintiff has failed to successfully submit a
17 complaint articulating claims which can properly be heard in federal court; specifically, he has
18 continually asserted claims which were inextricably intertwined with his state criminal court
19 proceedings, in addition to failing to articulate the "extraordinary circumstances" which would
20 allow a federal court to intervene in a pending state criminal prosecution. *See* Dkts. #6 and #21.

21 Plaintiff responded by filing a "Motion Pursuant to 28 U.S.C. 455(A), (B), (1)" and
22 "Motion Pursuant to 28 U.S.C. 144" (Dkts. #33 and #34¹) requesting the recusal of the

23 ¹ Plaintiff improperly filed these pleadings with the Ninth Circuit Court of Appeals,
24 which referred them to the District Court.

1 Magistrate Judge. Judge Donohue, upon review of Plaintiff's motion, declined to recuse
2 himself. Dkt. #35. In accordance with the Local Rules of this District, the matter has been
3 referred to the Presiding Judge for review of that decision. LCR 3(e).

4 Pursuant to 28 U.S.C. § 455(a), a judge of the United States shall disqualify himself in
5 any proceeding in which his impartiality "might reasonably be questioned." Federal judges also
6 shall disqualify themselves in circumstances where they have a personal bias or prejudice
7 concerning a party or personal knowledge of disputed evidentiary facts concerning the
8 proceeding. 28 U.S.C. § 455(b)(1).

9 Under both 28 U.S.C. §144 and 28 U.S.C. § 455, recusal of a federal judge is appropriate
10 if "a reasonable person with knowledge of all the facts would conclude that the judge's
11 impartiality might reasonably be questioned." *Yagman v. Republic Insurance*, 987 F.2d 622, 626
12 (9th Cir.1993). This is an objective inquiry concerned with whether there is the appearance of
13 bias, not whether there is bias in fact. *Preston v. United States*, 923 F.2d 731, 734 (9th
14 Cir.1992); *United States v. Conforte*, 624 F.2d 869, 881 (9th Cir.1980). In *Liteky v. United*
15 *States*, 510 U.S. 540 (1994), the United States Supreme Court further explained the narrow basis
16 for recusal:

17 [J]udicial rulings alone almost never constitute a valid basis for a bias or
18 partiality motion. . . . [O]pinions formed by the judge on the basis of facts
19 introduced or events occurring in the course of the current proceedings, or
20 of prior proceedings, do not constitute a basis for a bias or partiality motion
21 unless they display a deep seated favoritism or antagonism that would make
22 fair judgment impossible. Thus, judicial remarks during the course of a trial
23 that are critical or disapproving of, or even hostile to, counsel, the parties, or
24 their cases, ordinarily do not support a bias or partiality challenge.

Id. at 555.

22 Plaintiff cites no reason or evidence in support of his position other than the rulings of
23 Judge Donohue. He claims that Judge Donohue is "trying to protect the Seattle Police
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1 Department and their officers, the City of Seattle, and King County and their employee's several
2 officers who work for the Seattle Police Department [sic]." Dkt. #33 at 1. He presents no
3 evidence of this (the Court can only speculate that Plaintiff has interpreted the refusal to accept
4 his filings to date as an attempt to "shield" the Defendants from liability), and a review of Judge
5 Donohue's rulings reveals only that he has extended every effort in attempting to help Plaintiff
6 understand what he needs to do in order to file a complaint which states a proper cause of action.

7 A judge's conduct in the context of past or pending judicial proceedings does not
8 constitute the requisite bias under 28 U.S.C. § 144 or § 455 if it is prompted solely by
9 information that the judge received in the context of the performance of his duties. Bias is
10 almost never established simply because the judge issued adverse rulings against a party. If
11 Plaintiff believes that Judge Donohue has committed legal error in his rulings, he is entitled to
12 make that argument on appeal to the Ninth Circuit Court of Appeals; he is not entitled to recusal
13 of the judge who made the rulings.

14 The Court finds no evidence upon which to reasonably question Judge Donohue's
15 impartiality and AFFIRMS his denial of Plaintiff's requests that he recuse himself (Dkts. #33
16 and #34).

17 The Clerk SHALL provide copies of this Order to Plaintiff and to all counsel of record.

18 Dated this 11 day of April, 2017.

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20 RICARDO S. MARTINEZ
21 CHIEF UNITED STATES DISTRICT JUDGE
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